United Nations A/70/133

General Assembly

Distr.: General
8 July 2015

Original: English

Seventieth session
Item 55 of the preliminary list*
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 69/91 on the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories.

* A/70/50.

15-11547 (E) 230715

Please recycle

1. The present report is submitted pursuant to General Assembly resolution 69/91, adopted on 5 December 2014, the operative part of which reads as follows:

> "*The General Assembly*,
>
> "...
>
> "1. *Reaffirms* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
>
> "2. *Demands* that Israel accept the de jure applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, and that it comply scrupulously with the provisions of the Convention;
>
> "3. *Calls upon* all High Contracting Parties to the Convention, in accordance with article 1 common to the four Geneva Conventions and as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
>
> "4. *Notes* the ongoing consultations by Switzerland, the depositary State, regarding the requests to convene a conference of the High Contracting Parties to the Fourth Geneva Convention;
>
> "5. *Reiterates* the need for speedy implementation of the relevant recommendations contained in the resolutions adopted by the General Assembly, including at its tenth emergency special session and including resolution ES-10/15, with regard to ensuring respect by Israel, the occupying Power, for the provisions of the Convention;
>
> "6. *Requests* the Secretary-General to report to the General Assembly at its seventieth session on the implementation of the present resolution."

2. On 27 March 2015, the Secretary-General addressed a note verbale to the Government of Israel, in which he requested, in view of his reporting responsibilities under resolution 69/91, that the Government inform him of any steps that it had taken, or envisaged taking, concerning the implementation of the relevant provisions of that resolution.

3. No reply had been received from Israel at the time of the preparation of the present report.

4. By a note verbale dated 27 March 2015, sent to all permanent missions of all the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, including Palestine, the Secretary-General drew attention to paragraph 3 of resolution 69/91. The Secretary-General requested, in view of his reporting obligations under that resolution, information regarding any steps that the High Contracting Parties had taken or envisaged taking concerning its implementation.

5. Six replies to the note verbale had been received at the time of the preparation of this report.

6. On 27 April 2015, **the Permanent Mission of Cuba** replied to the note verbale. Cuba noted that it fully supported General Assembly resolution 69/91 and reiterated its call for a strict and speedy application of the resolution by all States Members of the United Nations.

7. Cuba observed, with grave concern, that despite several calls by the international community to end all violence and illegal settlement activities, and halt and reverse the construction of the wall, among other illegal policies and practices, Israel continued to colonize the Palestinian Territory, including East Jerusalem; displace Palestinian civilians; impose collective punishments on Palestinians; and violate international law.

8. Cuba noted that as a High Contracting Party to the Fourth Geneva Convention, it reaffirmed the entire and absolute applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem, and the other Arab territories occupied by Israel since 1967.

9. Cuba reiterated its call to the occupying Power to immediately end all violations of international law, including international humanitarian law, and fully abide by its legal obligations, including under the framework of the Fourth Geneva Convention of 12 August 1949. Cuba recalled that article 1 of the Convention established that the High Contracting Parties were committed to respect and to ensure respect for the Convention in all circumstances.

10. Cuba noted that the Fourth Geneva Convention protects the civilian population in the occupied territories against abuses committed by the occupying Power. It noted that the Convention required the occupying force not to discriminate against the civilian population; to protect it against all kinds of violence; and, to the extent possible, to ensure normal life in accordance with the laws, culture and traditions of the occupied population. Cuba argued that notwithstanding those requirements, Israel continued to violate the provisions of the Fourth Geneva Convention.

11. Cuba condemned the prolonged and illegal occupation of the Palestinian Territory, and the military campaign against Palestinians, particularly in the Gaza Strip. Cuba asserted that through those military campaigns, the occupying Power had continued to perpetrate grave violations of human rights and war crimes.

12. Cuba urged that the forced and arbitrary detention and imprisonment of thousands of Palestinian civilians, including hundreds of women and children, and ill-treatment of prisoners in Israeli prisons must cease immediately. Furthermore, it demanded that the detainees and prisoners be freed.

13. Cuba stated that Israel rejected the applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and by doing so, declined to conform to the will of the international community, which had established the applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem. Cuba stated that the impunity with which the occupying Power had acted for many years now was due, inter alia, to the inaction of the Security Council. Cuba argued that the Council had been marred by double standards and lack of transparency on questions related to Palestine, and called for such practices to cease.

14. Cuba reaffirmed its determination to continue supporting the legitimate struggle of the Palestinian people for justice, dignity, peace and the right to self-

determination and sovereignty of an independent State of Palestine, with East Jerusalem as its capital.

15. On 21 May 2015, **the Permanent Mission of Ireland** responded to the note verbale, underscored that it did not recognize any transfer of sovereignty or annexation of Palestinian territory occupied by Israel in 1967, pending any agreement between the parties to the conflict. Ireland recalled that it had consistently affirmed that the establishment of Israeli settlements in the Occupied Palestinian Territory was in breach of international law.

16. Ireland noted that it was developing a national plan for the implementation of the Guiding Principles on Business and Human Rights, but it was not aware of any Irish businesses currently known to be engaged in activity in Israeli settlements. Furthermore, Ireland has shared information that in July 2014, the Irish Department of Foreign Affairs and Trade had issued advice for Irish citizens and businesses, warning about the risks involved in financial and economic activities in Israeli settlements in the Occupied Palestinian Territory.

17. On 8 April 2015, **the Permanent Mission of Turkey** replied to the note verbale, noting that it attached importance to the applicability of the Fourth Geneva Convention to the occupied State of Palestine, including East Jerusalem.

18. Turkey noted that it had extended full support to the request of the State of Palestine to convene the Conference of the High Contracting Parties to the Fourth Geneva Convention. Turkey noted that the Conference, which was organized on 17 December 2014, had provided an important opportunity to the States Parties to reaffirm the applicability of the Fourth Geneva Convention in the occupied State of Palestine, including East Jerusalem.

19. Turkey provided assurance that it would continue its efforts, in cooperation with other States Parties, to ensure that the humanitarian principles underlying the Fourth Geneva Convention be applied and respected in the occupied State of Palestine, including East Jerusalem.

20. On 30 April 2015, **the Permanent Mission of Brazil** to the United Nations in Geneva responded to the note verbale, noting that it had constantly recalled the international obligations borne by Israel, as the occupying Power. It noted that Brazil joined the international community in exerting pressure to ensure the applicability of the Fourth Geneva Convention and other international regulations to the State of Israel.

21. Brazil emphasized that it fully supported the convening of the Conference of the High Contracting Parties to the Fourth Geneva Convention, held in Geneva in December 2014. Brazil recalled that on that occasion, the Parties once again reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory.

22. Brazil stated that the Brazilian legislative decree that approved a free trade agreement between Brazil and Israel provided for Brazil to negotiate the "exclusion from the coverage of the agreement for goods whose 'certificate of origin' indicates locations under the Israeli administration since 1967".

23. Brazil highlighted that it had repeatedly expressed concerns about the withholding of Palestinian customs duties by Israel, in contradiction to the Protocol of Paris.

24. On 22 April 2015, **the Permanent Mission of Qatar** to the United Nations in Geneva responded to the note verbale. Qatar shared copies of resolutions adopted by the leaders of the Arab States assembled at the twenty-sixth session of the Council of the League of Arab States in Sharm el-Sheikh, Egypt, on 28 and 29 March 2015, namely, resolution (614) entitled "Following up on the political developments of the Palestinian issue and the Arab-Israeli conflict, and activating the Arab peace initiative", and resolution (615) entitled "The Arab action to end Israeli occupation of the Palestinian territories".

25. On 29 December 2014, **the Permanent Representative of Switzerland** to the United Nations addressed a letter to the Secretary-General. The letter informed the Secretary-General that by note verbale of 22 July 2014, Switzerland, in its capacity as depositary of the Geneva Conventions, had notified the High Contracting Parties that consultations on the possible convening of a conference of High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War would resume, in accordance with paragraph 5 of General Assembly resolution 64/10 and in the light of the various reports prepared by the depositary regarding the implementation of that recommendation.

26. The letter further mentioned that from 28 July to 3 December 2014, Switzerland, through its Permanent Mission in Geneva, had held extensive consultations with a broad cross section of High Contracting Parties from all geographic regions, emphasizing its willingness to engage in bilateral dialogue with any other Party that so wished. Switzerland stated that it had also consulted with international stakeholders, such as the International Committee of the Red Cross (ICRC). Furthermore, Switzerland stated that the consultations focused on the desirability of holding the conference as well as its objective, agenda and modalities. The letter mentioned that, acting as an impartial facilitator, Switzerland had sought to determine the will of the High Contracting Parties to the Geneva Convention and, in accordance with existing practice, the depositary conducted those consultations on the understanding that the proposed conference should be inclusive and constructive and have the objective of strengthening respect for international humanitarian law. Switzerland informed the Secretary-General that, based on the comments and contributions of the High Contracting Parties, international humanitarian law and the two previous conferences held in 1999 and 2001, a draft declaration and draft modalities were developed with the goal of reflecting the views of as many of the High Contracting Parties as possible.

27. Furthermore, Switzerland noted that, in accordance with the agreed modalities elaborated, the final draft declaration would be presented for adoption by consensus, without a vote, and that the Parties should be represented at the level of permanent representatives of the permanent missions in Geneva. It mentioned that only statements by established groups would be accepted, and that national statements could not be delivered in the plenary, but could be transmitted in writing to the depositary up to 24 hours before the start of the conference. The modalities also stated that the conference would be closed to the public and the media; only selected organizations would be invited to participate as observers.

28. Switzerland informed the Secretary-General that on 9 December 2014, the depositary had found that a critical mass of the High Contracting Parties from across regions supported the organization of a conference on the basis of the modalities and the text of the final draft declaration. Therefore, by note verbale of

10 December 2014, the depositary notified all of the High Contracting Parties that a conference would take place. A small number of States Parties expressed their opposition to the holding of a conference and did not participate.

29. On 17 December 2014, 128 High Contracting Parties participated in the Conference of High Contracting Parties to the Fourth Geneva Convention, held at the World Meteorological Organization in Geneva, and adopted by consensus a 10-point declaration (see below). The depositary and representatives of ICRC and the United Nations Relief and Works Agency for Palestine Refugees in the Near East delivered statements, and several High Contracting Parties spoke on behalf of established groups. Switzerland stated that, as the depositary, it had transmitted the official conference documents to all High Contracting Parties, and submitted that that concluded the actions of the depositary in respect of the recommendation set out in paragraph 5 of General Assembly resolution 64/10.

30. The 10-point Declaration reads as follows:

> "1. This Declaration reflects the common understanding reached by the participating High Contracting Parties to the Conference of High Contracting Parties to the Fourth Geneva Convention on 17 December 2014, mindful of the recommendation by the United Nations General Assembly in resolution 64/10 of 5 November 2009.
>
> "2. The participating High Contracting Parties reaffirm the statement of the Conference of High Contracting Parties to the Fourth Geneva Convention of 15 July 1999 and the Declaration of 5 December 2001.
>
> "3. The participating High Contracting Parties reiterate the need to fully respect the fundamental principles of international humanitarian law, according to which all parties to the conflict, and as such also non-State actors, must respect, at all times, inter alia, (1) the obligation to distinguish between civilians and combatants and between civilian objects and military objectives; (2) the principle of proportionality; and (3) the obligation to take all feasible precautions to protect civilians and civilian objects. In addition, the participating High Contracting Parties emphasize that no violation of international humanitarian law by any party to a conflict can relieve the other party from its own obligations under international humanitarian law.
>
> "4. The participating High Contracting Parties emphasize the continued applicability and relevance of the Fourth Geneva Convention, which all High Contracting Parties have undertaken to respect and to ensure respect for in all circumstances. As such, they call on the occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem. They also remind the occupying Power of its obligation to administer the Occupied Palestinian Territory in a way which fully takes into account the needs of the civilian population while safeguarding its own security, and notably preserve its demographic characteristics.
>
> "5. The participating High Contracting Parties recall the primary obligation of the occupying Power to ensure adequate supplies of the population of the occupied territory and that whenever it is not in a position to do so, it is under the obligation to allow and facilitate relief schemes. In that case, they further recall that all High Contracting Parties shall permit the free passage of humanitarian relief and shall guarantee its protection. In this

regard, the participating High Contracting Parties reiterate their support to the activities of the International Committee of the Red Cross, within its particular role conferred upon it by the Geneva Conventions, of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and of other impartial humanitarian organizations, to assess and alleviate the humanitarian situation in the field. Beyond, all parties to the conflict, and as such also non-State actors, should make all possible efforts to allow and facilitate rapid and unimpeded passage of humanitarian relief for the population of the occupied territory.

"6. The participating High Contracting Parties emphasize that all serious violations of international humanitarian law must be investigated and that all those responsible should be brought to justice.

"7. The participating High Contracting Parties express their deep concern about recurring violations of international humanitarian law by all parties to the conflict, and as such also by non-State actors, including in the context of military operations and attacks directed against and emanating from the Occupied Palestinian Territory since the Conference of High Contracting Parties on 5 December 2001 and the resulting great suffering of the civilian population. They are particularly concerned about the number of victims among the civilian population in densely populated areas.

"8. The participating High Contracting Parties express their deep concern about the impact of the continued occupation of the Occupied Palestinian Territory. They recall that, according to the advisory opinion of the International Court of Justice of 9 July 2004, the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, at least insofar as it deviates from the Green Line, and its associated regime, are contrary to international humanitarian law. They equally express their deep concern, from an international humanitarian law standpoint, about certain measures taken by the occupying Power in the Occupied Palestinian Territory, including the closure of the Gaza Strip. They reaffirm the illegality of the settlements in the said territory and of the expansion thereof and of related unlawful seizure of property as well as of the transfer of prisoners into the territory of the occupying Power.

"9. With regard to the conduct of hostilities, the participating High Contracting Parties underscore that the following acts are, among others, prohibited by international humanitarian law for all parties to the conflict, and as such also for non-State actors: (1) indiscriminate attacks of any kind, including attacks which are not directed at specific military objectives, and the employment of a method or means of combat which cannot be directed at a specific military objective or whose effects do not meet the requirements of the principles mentioned in paragraph 3 of this Declaration; (2) disproportionate attacks of any kind, including excessive destruction of civilian infrastructure; (3) destruction of property, carried out inconsistently with the principles mentioned in paragraph 3 of this Declaration; (4) attacks against protected persons and objects, including medical buildings, material, transports, units and personnel, as well as humanitarian personnel and objects, unless and for such time as they have lost their protection against direct attack; (5) attacks against civilian objects, including schools, unless and for such time as they are

military objectives; (6) the location of military objectives in the vicinity of civilians and civilian objects, when it would be avoidable; and (7) the use of civilians as human shields.

"10. The participating High Contracting Parties reiterate the need to find a peaceful solution to the conflict, and stress that respect for and implementation of the Fourth Geneva Convention and international humanitarian law in general is essential to achieve a just and lasting peace."